IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 162 OF 2001.

Mr. N. Dinakara Shetty,
Assistant Manager, Vijaya Bank,
Panaji-Goa, resident of
House No. LRG-223, Sai Sneha
Housing Board Colony, Porvorim,
Bardez, Goa. ..... Petitioner.

Versus

1. The Union of India,
represented by the Secretary
to the Government,
Ministry of Finance,
New Delhi.

2. Vijaya Bank (a Government
of India Undertaking),
represented by the Chairman &
Managing Director, Head Office:41/2,
M.G. Road, Bangalore, 560 001,

3. The Chairman & Managing
Director, Vijaya Bank,
Head Office: 41/2, M.G.
Road, Bangalore, 560 001,

4. The General Manager,
Personnel Department (HRD)
Vijaya Bank, Head Office:
41/2, M.G. Road,
Bangalore, 560 001,

5. Vijaya Bank,
having its Branch/
Regional Office at Panaji, Goa. .... Respondents.

Shri V.A. Lawande, Advocate for the Petitioner.

Shri E.P. Badrinarayanan, Addl. Central Government Standing Counsel for the Respondent No.1.

Shri U.R. Timble, Advocate for the Respondents No.2 to 5.

CORAM: A.P. LAVANDE &
N.A. BRITTO, JJ.

DATE: 6th May, 2005.

J U D G M E N T: (PER BRITTO, J.)

In this petition, the petitioner who is an employee of the respondent - Vijaya Bank seeks a direction against the said Bank to treat his application for voluntary retirement as withdrawn and to continue him in service and not to relieve him with effect from 31.5.01 and consequential benefits.

2. The petitioner is an employee who joined respondent - Vijaya Bank on 2.7.1973 and in normal course was due to retire on 31.3.08. The petitioner was the Assistant Manager at the time of filing this petition.

3. The said Bank is a body corporate governed under the provisions of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 and the service conditions between the petitioner and the said Bank are governed by the Vijaya Bank (Officers) Service Regulations while the service conditions of the

staff are governed by the awards made from time to time and by bipartite settlements.

4. The respondent-Bank first introduced what is known as Vijaya Bank (Employees') Pension Regulations, 1995, ("Regulations", for short) as per the guidelines of the Indian Banks Association. The Regulations, inter alia, provided that on or after 1.11.1993 an employee who has completed 20 years of qualifying service could retire from service by giving notice of not less than three months in writing to the appointing authority. The said Regulations also provided that the qualifying service of an employee retiring voluntarily under the said Regulations was to be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed 33 years and it does not take him beyond the date of superannuation.

5. Thereafter by Circular No.231/2000 dated 23.11.2000, the Bank introduced a Scheme which is known as the Vijaya Bank (Employees') Voluntary Retirement Scheme 2000, ("Scheme", for short). The Scheme came into force on 1.12.2000 and was to remain in force until 31.1.01. The object of the Scheme was to

enable the Bank to make available human resources possessing skills matching with current and future requirements, of different age groups in right proportions to maintain a well balanced age profile enabling proper succession, planning and in optimum number at all levels in tune with the organizational structure and business strategies, who are highly motivated, committed, flexible and responsive to change. The terms of the Scheme were contained in Annexure-I to the said Circular and the proforma application was contained in Annexure-II.

6. Clause 7 of the said Circular dated 23.11.2000 provided that the Employees eligible to seek voluntary retirement under this Scheme and also eligible to seek voluntary retirement under Regulation 29 of the Regulations, shall give notice of seeking voluntary retirement under the said Regulations by indicating to that effect specifically in the application seeking voluntary retirement under this Scheme.

7. The Scheme, inter alia, provided that :

5.0.0. **Application** – The Scheme shall apply to all permanent employees in the service of the Bank.

6.1.0./6.1.2 – Employees against whom Disciplinary Proceedings are contemplated/pending or are under suspension, were ineligible.

7.1.0. - Amount of ex-gratia - The amount of ex-gratia payable shall be at the rate of 60 days salary for each completed year of service or salary for the number of months service is left whichever is less.

8.0.0. - Other Benefits - In addition to the amount of Ex-gratia payable, an employee seeking voluntary retirement under the scheme is eligible to receive the following other benefits :

8.1.0.....

8.2.0. - Pension (including commuted value of pension) as per Vijaya Bank (Employees) Pension Regulations, 1995 and employee's contribution towards Vijaya Bank Staff Provident Fund in case of Pension optees.

8.3.0. .....

8.4.0. .....

11.2.0. - An employee aggrieved of the decision of the Competent Authority rejecting the application for retirement under the Scheme shall have the right to make an appeal to the Appellate Authority so as to reach the said Authority within 30 days from the date of receipt of communication of rejection. The Appellate Authority shall dispose of an appeal after recording its reasons therefor and communicate the decision to the employee concerned, within 30 days from the date of receipt of the appeal. Unless and until

decision by the Appellate Authority and communicated in writing to the employee concerned, on the expiry of the stipulated period, it shall not be deemed that the appeal is allowed by the Appellate Authority. If no decision is taken and communicated to the employee concerned within the stipulated period, it shall be deemed that the appeal was dismissed by the Appellate Authority. The application seeking voluntary retirement submitted by the employee under the Scheme shall be irrevocable. It will not be open for an employee to withdraw the application after having exercised such option voluntarily, under any circumstances.

8. The petitioner submitted his application as per Annexure II on 6th December, 2000. As far as the Columns of the said application are concerned, the petitioner was required to strike out whichever was not applicable. The petitioner submitted the said application as irrevocable and unconditional under the said Scheme and cited two reasons in support of his application, namely that his wife was bedridden and was suffering from acute viral encephalitis since 1982, and he had hearing problem and found it difficult to discharge his duties. In terms of Columns 4 and 5 of the said application, the petitioner stated that he has opted for pension under the Regulations, and that he also sought voluntary

retirement under Regulation 29 of the Regulations. The petitioner requested the Competent Authority to waive the requisite notice of three months for seeking voluntary retirement under the said Regulations. In terms of Column 8 of the said application, the petitioner stated that he would ensure closure of all his liabilities due to the Bank before being relieved from service from the Bank and in terms of sub-column (a) of Column 8 the petitioner mentioned what were his liabilities. The petitioner had then completed 27 years, 4 months and 29 days of service as on 30th December, 2000.

9. The petitioner's application was accepted by letter dated 28th February, 2001, and the petitioner was informed that his application for voluntary retirement under the said Scheme was accepted by the competent authority, subject to his complying with all the relevant provisions of the Scheme, particularly Clause 11.7.0 of the said Scheme. The petitioner was further informed that he would be relieved from service on 31st May, 2001. This was apparently because Clause 11.13.0 of the said Scheme provided that if due to administrative exigencies, the Bank was unable to relieve any such employee from service, the date of relieving would be postponed for a reasonable period but not later

than one year from the date of acceptance. The petitioner was also informed, by way of clarification, that his application was considered under the said Scheme and, therefore, he was ineligible for addition of five years, remainder of service whichever is lower, for the purpose of determining pension as well as commutation of pension or available under Regulation 29 of the Regulations. The petitioner was also informed that the Bank reserved the right to reject his application any time in future before relieving him from service in case there was any contemplated disciplinary action initiated or to be initiated against him.

10. After the petitioner's application dated 6th December, 2000, was accepted by the Bank by their letter dated 28th February, 2001, the petitioner, by his letter dated 10th April, 2001, informed the Bank that he had inadvertently submitted his V.R.S. application, which was accepted by them by letter dated 28th February, 2001. The petitioner informed the Bank that he was now completely upset about his decision which was taken by him due to his domestic problems and mental pressure, which since had eased and he felt that his decision was wrong and, therefore, he sought permission to withdraw his application dated 6th December, 2000, and sought an opportunity to continue service in

the Bank. The petitioner sent another letter dated 15th May, 2001, and as nothing was heard from the Bank, the petitioner approached this Court on 21st May, 2001. When the matter came up for hearing on 23rd May, 2001, the respondent - Bank, though duly served, remained absent and this Court, after placing reliance on the judgment in the case of ***Shambu Murari Sinha vs. Project & Development India & Anr.***, [(2000) 5 SCC 621], granted ad interim relief and directed the respondent- Bank to permit the petitioner to continue in service and not to relieve him in pursuance of his application under the said Scheme.

11. The petitioner, therefore, continues in service.

12. Mr. Lawande, the learned counsel of the petitioner, has made two submissions. According to Mr. Lawande, as the petitioner was to be relieved on 31st May, 2001, the petitioner was entitled to withdraw his application under V.R.S. even after acceptance as the jural relationship between the petitioner and Vijaya Bank could be terminated only after the petitioner was relieved from service. On the other hand, Mr. Timble, the learned counsel of the said Bank has submitted that the petitioner's application was under a specially funded scheme and was not a

normal application under normal regulations, which provided for voluntary retirement and, therefore, the provisions which are normally applicable in case of normal retirement or resignation would not be applicable to this case. According to both the learned counsels, the controversy involved herein is settled by the judgment of the Supreme Court in the case of ***Bank of India & Ors. vs. O.P. Swarnakar & Ors.***, [(2003) 2 SCC 721]. As per Mr. Timble, in the case of ***O.P. Swarnakar*** (supra), a scheme similar to the present Scheme was floated by various Banks. Mr. Timble has also relied upon on the case of ***State Bank of Patiala vs. Romesh Chander Kanoji & Ors.***, [(2004) 2 SCC 651].

13. Mr. Lawande has particularly referred to para 112 at page 764 of the said judgment in ***Swarnakar's*** case (supra), wherein the Supreme Court stated that:-

> "It may be that therein there did not exist a clause to the effect that once an option to voluntary retirement is accepted, the employee cannot withdraw the same, but the law laid down therein would apply herein also."

14. As per Mr. Lawande, the import of the judgment in

Swarnakar's case (supra) is that the employees were entitled to withdraw their voluntary retirement applications at any time before the actual date of relieving from service and that only those who had taken the benefits under the Scheme were not allowed to withdraw their applications for voluntary retirement. Mr. Lawande has placed reliance on the case of ***State of Punjab vs. Baldev Singh*** , [(1999)6 SCC 172], as regards the true nature of a precedent. The Constitution Bench of the Supreme Court in this case stated that it is a well-settled proposition of law that a decision is an authority for what it decides and not that everything said therein constitutes a precedent. The courts are obliged to apply an intelligent technique in the use of precedents bearing it in mind that a decision of the court takes its colour from the questions involved in the case in which it was rendered. The court quoted with approval, what was stated by the Supreme Court in the case of ***Commissioner of Income Tax vs. Sun Engineering Works (P) Ltd.*** , [(1992) 4 SCC 363] which reads:-

> "It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be complete `law' declared by this Court. The judgment must

> be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings."

15. Mr. Timble, on the other hand, has submitted that the true scope of the judgment of the Supreme Court in ***Swarnakar's*** case (supra) as far as the nationalized Banks were concerned is that the applications for voluntary retirement could have been withdrawn only before the same were accepted by the Banks and not thereafter.

16. In fact, ***Swarnakar's*** case (supra), which is a decision of three Judges of the Supreme Court came up for consideration

before another three Judges of the Supreme Court in the case of ***State Bank of Patiala vs. Romesh Chander Kanoji & Ors.***, [(2004) 2 SCC 651].

17. In ***State Bank of Patiala vs.Romesh Chander Kanoji & Ors.***, (supra) the Supreme Court stated that:-

> " It is evident from the above that in the case of SBIVRS, where there is specified provision for withdrawal, the employee must exercise his option within the time specified; and in case of nationalized banks where there was no provision to withdraw (and in fact the Scheme forbade withdrawal), the withdrawal must be effected prior to acceptance by the Bank. "

The Supreme Court further stated that it was important to bear in mind that the Schemes in question were basically funded schemes. Under such Schemes, time is given to every employee to opt for voluntary retirement and similarly time is given to the management to work out the Scheme. Clause (5) of SBPVRS gave fifteen days' time to the employees to opt for the Scheme and under Clause (8) a period of two months is given to the management to work out the Scheme. Since the said Schemes are funded schemes, the

management is required to create a fund. The creation of the fund would depend upon the number of applications; the cost of the Scheme; liability which the Scheme would impose on the Bank and such other variable factors. If the employees are allowed to withdraw from the Scheme at any time after its closure, it would not be possible to work out the Scheme as all calculations of the management would fail. Therefore, Clause (5) of SBPVRS gives locus poenitentiae to the employee to withdraw by 1st March, 2001, after which the mode of acceptance contemplated by Clause (8) of the SBPVRS would apply and the Bank would proceed to vet the applications. The Supreme Court further stated that Clause (5) gave time to the employee to withdraw by 1st March, 2001, and the Bank was given time of two months thereafter to complete the designated mode of acceptance. Reading Clauses (5) and (8) and (9)(i), it was clear that the employees were precluded from withdrawing from SBPVRS after the closure of the Scheme on 1st March, 2001. The Supreme Court, therefore, concluded that the ratio of ***Swarnakar's*** case squarely applied to the facts of that case as well.

18. The observations in ***Swarnakar's*** case (supra), on which reliance has been placed on behalf of the petitioner, and

which have been reproduced hereinabove, were made in the context of the case of ***Shambu Murari Sinha vs. Project & Development India & Anr.***, [(2000)5 SCC 621], which was a case where option to withdraw was exercised after its acceptance, but before it was made effective. In that case, the petitioner - Shambu Murari Sinha, had submitted his application for voluntary retirement dated 18th October, 1995, and almost two years later, the Bank by their letter dated 30th July, 1997, informed the said petitioner that his voluntary retirement was accepted but the release memo alongwith detailed particulars would follow and eventually the said petitioner came to be relieved on 26th September, 1997, i.e. after the said petitioner had submitted two letters dated 7th August, 1997 and 24th September, 1997, withdrawing his application dated 18th October, 1995, by which he had sought voluntary retirement.

19. In ***Swarnakar's*** case (supra) the Supreme Court has held that a contract of employment is also a subject-matter of contract under the Indian Contract Act, 1872, unless it is governed by a statute or statutory rules. The Supreme Court has further held that the scheme having regard to its provisions, would merely constitute a invitation to offer and not an offer and the proposal of an employee when accepted by the Bank would

constitute a promise within the meaning of Section 2(b) of the said Act, which means that once an offer is accepted, it becomes an enforceable contract. The Supreme Court referred to various treatises on the subject of the of contract, including ***Chitty on Contracts*** as well as ***Anson's Law of Contract*** and referring to the latter, the Supreme Court took note of:-

> "(a) *Revocation of the offer* . - The law relating to the revocation of an offer may be summed up in two rules: (1) an offer may be revoked at and time before acceptance, and (2) an offer is made irrevocable by acceptance."

20. In the case of ***State Bank of Patiala*** (supra), the Supreme Court again referred to ***Chitty on Contracts*** where the learned author stated that:-

> "an offer may be withdrawn at any time before it is accepted. That this rule applies even though the offeror has promised to keep the offer open for a specified time, for such a promise is unsupported by consideration."

The Supreme Court therefore concluded in the case of ***State Bank of Patiala*** (surpa), that in the case of nationalized Banks where there was no provision to withdraw (and in fact the Scheme forbade

withdrawal), the withdrawal must be effected prior to acceptance by the Bank. It follows therefrom that the ratio of both the decisions of the Supreme Court is that once the petitioner gave his offer of voluntary retirement, in the absence of statute or statutory rules, his service would stand terminated from the date on which the offer is accepted by the appropriate authority and it would not be open to the petitioner to withdraw his offer after it was accepted by the appropriate authority, in consonance with the Rules of the said scheme. If the petitioner had any locus poenitentiae, that could be before his offer was accepted and before a concluded contract came into existence between the petitioner and Bank, and not thereafter. If at all a later date was fixed by the Bank to relinquish the petitioner that was in accordance with Clause 11.13.0 of the Scheme. We are, therefore, not inclined to accept the petitioner's submission that the petitioner was entitled to withdraw his offer of voluntary retirement after the same was accepted by the Bank and before he was actually relieved from service. Petitioner's offer of voluntary retirement had become irrevocable after its acceptance by the Bank.

21. The case of ***Raj Kumar vs. Union of India, (AIR 1969 SC 180),*** would be inapplicable to the facts of the case because it

was a case where the petitioner had withdrawn his offer of resignation before the communication of his order/letter of acceptance had reached him. In other words, it could be said that in that case the petitioner had withdrawn his offer of resignation before the same was accepted by his employer. The case of ***Balram Gupta vs. Union of India & Anr.***, (1987[Supp.] SCC 228), was again a case where retirement from Government service was to take effect at a subsequent date prospectively and the withdrawal was done long before that date and, therefore, it was held that the petitioner had no locus poenitentiae and could withdraw before the prospective date. We have already referred to the case of ***Shambu Murari Sinha*** (supra), where the option to withdraw was again exercised though after acceptance, but before it was made effective. As said before, in the case at hand, the petitioner's offer was accepted and it brought about a valid and binding contract between the petitioner and the Bank. It is only at the option of the Bank that the Bank chose to relieve him at a future date, but that in itself would not give a right to the petitioner to withdraw the offer after a concluded contract of termination of service came about between the petitioner and the Bank.

22. The second submission made on behalf of the petitioner

is that the acceptance was conditional. It was conditional in that it was accepted subject to the payment of all the dues as per the condition contained in Clause 11.7.0 of the Scheme. It was also conditional in that the petitioner was denied and was informed that the petitioner was ineligible for additional five years remuneration of service for the purpose of determining pension as per Regulation 29 of the Regulations. On the other hand, it has been pointed out on behalf of the Bank, and in our view rightly, that the petitioner had not taken these pleas in either of his letters of withdrawal dated 10th April, 2001, as well as 15th May, 2001, nor in the petition, as originally filed and they were introduced for the first time by amendment during the hearing of the petition on or about 20th March, 2005. Admittedly, the petitioner was bound to comply with Clause 11.7.0 of the Scheme by which the employees were informed that all amounts payable under the Scheme would be subject to prior settlement, repayment in full of all loans, advances, dues etc. Moreover, the petitioner in terms of Column 8 of his application dated 6th December, 2000, had clearly undertaken to ensure closure of all his liabilities to the Bank before he was relieved from service and not only that, the petitioner had also mentioned what were his liabilities in sub-column (a) of Column 8 of the said application of voluntary retirement dated 6th

December, 2000, and only because the Bank in their letter dated 28th February, 2001, informed the petitioner that he had to comply with Clause 11.7.0 of the Scheme, it does not mean that the petitioner's application for voluntary retirement was accepted conditionally. That was only a clarification mentioned by the Bank in terms of Clause 11.7.0 of the Scheme and the undertaking given to that effect by the petitioner. By no stretch of imagination it could be said that it was a condition of acceptance of the application for voluntary retirement. As far as the second alleged condition, it may be stated that Clause 8.0.0 mentioned about the other benefits which the employees were entitled to by virtue of their going on voluntary retirement. As already stated, by virtue of Clause (7) of the Circular dated 23rd November, 2000, the Bank had informed its employees that the employees eligible to seek voluntary retirement under this Scheme and those who were also eligible to seek voluntary retirement under Regulation 29 of the Regulations, would give notice of seeking voluntary retirement under the said Regulations by indicating to that effect specifically in the application seeking voluntary retirement under the Scheme. In terms of the said letter/application for voluntary retirement dated 6th December, 2000, and Columns 4 and 5 thereof, the petitioner had made it abundantly clear that he was seeking

voluntary retirement from service under the Scheme and also under the Regulation 29 of the Regulations. One does not know as to when the petitioner realized that he would be deprived of added weightage of five years in terms of sub-clause (5) of Clause 29 of the said Regulations. The petitioner would be entitled to pension as per sub-clause (5) of Clause 29 of the said Regulations, in case the petitioner's application was accepted under the Regulations, and not under the Scheme. In our view, Clause 8.2.0 cannot be read so as to confer the benefits of added five years of service under the Regulations. The petitioner would be entitled for the said five years only if he had voluntarily resigned under the Regulations. The added weightage of five years which was available under Regulation 29(5) of the Regulations, could not have been in contemplation of the Bank because under the Scheme the Bank was giving ex gratia payment at the rate of 60 days salary for each completed year of service or salary for the number of months service is left, whichever is less. In other words, the Bank was otherwise giving substantial monetary benefits by way of ex gratia payment. We are, therefore, not inclined to accept the submission that the offer of acceptance of the petitioner was subject to the conditions referred to hereinabove. In fact what was said in the acceptance letter was rather superfluous, or, in any event, could be stated to be clarificatory in

nature and by no stretch of imagination it could be said that the acceptance was subject to the said conditions.

23. In view of the above, we find that there is no merit in this petition and, consequently, the same stands dismissed with no order as to costs. The petitioner continues in service by virtue of the order of this Court dated 23rd May, 2001. The Bank will be at liberty to relieve the petitioner after office hours of 31st May, 2005. At the request of the petitioner we stay the implementation of this Judgment for a period of four weeks from 1st June, 2005, to enable the petitioner to prefer a Special Leave Petition to the Supreme Court.

A. P. LAVANDE, J.

N. A. BRITTO, J.

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